Case Numbers: 2203674/2012V
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EMPLOYMENT TRIBUNALS

BETWEEN

Claimants	**and**	**Respondent**
(1) Mr Mirza Ejaz Ali Baig **(2) Mr Asad Haredali**		**London Underground Ltd**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

SITTING AT: London Central **ON: 24 November 2020**

BEFORE: Employment Judge A M Snelson

On hearing the Second Claimant (Mr Asad Haredali) in person and Ms L Seymour, counsel, on behalf of the Respondents;
And there being no appearance or representation by or on behalf of the First Claimant (Mr Mirza Ejaz Ali Baig);

The Tribunal adjudges that:

(1) The Second Claimant's application for a postponement of the hearing is refused.
(2) If and in so far as any such application is made, or is to be treated as being made, by or on behalf of the First Claimant, that application is also refused.
(3) On the Claimants' outstanding claims for remedies, the Tribunal awards compensation as follows:
    (a) In favour of the First Claimant, £2,420.59;
    (b) In favour of the Second Respondent, £2,773.89.

REASONS

1 This is the final chapter in group litigation brought by more than 30 claimants which dates back to 2012. The story can be traced from the judgments and orders at first instance and on appeal to the EAT and the Court of Appeal. The upshot of the Court of Appeal judgment, delivered in February 2019, was that the claims were remitted to me to assess compensation in accordance with the court's guidance. The order of the Court of Appeal stressed that the remission was only for the purposes of assessing compensation under the Agency Workers

Regulations 2010 ('AWR 2010'), reg 18(10) and that the Respondent's liability was for 50% of the underpayments prior to 15 October 2012.

2 I conducted a telephone hearing for case management on 22 September this year. By then, Mr Baig and Mr Hared[1], who had dispensed with the services of their solicitors, were the only remaining Claimants (the remedy claims of the others having been settled or, in a few instances, struck out).[2] By my Order, I gave brief directions including the following:

> **(1) No later than 9 October 2020 the Claimants shall deliver to the Respondents' representative and copy to the Tribunal statements of their cases on remedy responding to the detailed calculations recently supplied to them by the Respondents' representative. The statements must:**
>
> **(a) contain precise calculations of the separate sums claimed; and**
>
> **(b) explain clearly why each sum is said to be owing.**
>
> **(2) No later than 23 October 2020, the Respondents shall deliver to the Claimants and copy to the Tribunal brief written responses to the two documents produced in accordance with para (1) above.**

In accompanying 'Observations' (para 5), I drew attention to the Order of the Court of Appeal and added:

> **I can well understand why both Claimants feel aggrieved, as, no doubt, will many of their colleagues who have settled their claims. It is beyond dispute that 50% of the underpayments up to 15 October 2012 does not represent the full loss which they have suffered as a result of the infringement of their rights under the 2010 Regulations. In that sense, the Claimants have suffered an injustice. I regret that fact. But I did stress to Mr Baig and Mr Hared that I cannot simply make an award which seems 'fair'. I am strictly limited by the 2010 Regulations and the terms of the Judgment and Order of the Court of Appeal.**

3 Unfortunately Mr Baig and Mr Hared did not comply with my order, para (1).

4 The remedies hearing came before me in the form of a video hearing (by CVP). Mr Hared and Ms Seymour, counsel for the Respondent, attended. Mr Baig did not. I was supplied with a bundle prepared by the Respondent.

5 At the outset Mr Hared told me that Mr Baig had very recently contacted him to say that he would not be participating in the hearing as his mother was ill and he was experiencing a lot of stress and felt unable to attend. Mr Hared also said that he and Mr Baig had wanted to obtain fresh legal assistance but that they had been unable to do so owing to the pandemic. When asked what resolution (if any) he proposed, Mr Hared formally applied for a postponement of the hearing on the twin grounds of Mr Baig's unfortunate family circumstances and the stated need (of both Claimants) for independent legal assistance.

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[1] It seems that he is usually addressed by this shorter form of his name and has no objection to it.
[2] Likewise, the claims against the original First Respondent, Trainpeople.co.uk Ltd, long since in liquidation, had in effect been discontinued.

6 For reasons given orally, I declined the application. In short, I was supplied with no evidence or hard information in support of it. The case cried out to be brought to an end. The assessment of remedies appeared to be exceedingly straightforward: the Respondent had in May produced simple calculations of the compensation for which it accepted liability and the Claimants had failed to comply with my Order, para (1) or otherwise raise any apparently meritorious challenge to the figures put forward. Further delay would prejudice the Respondent and place yet another burden upon the Tribunal's overstretched resources.

7 I turned to the substance of the remedies claims. The judgment of the Court of Appeal, based on the Tribunal's original findings, was that compensation was payable of half the underpayment of basic pay between 24 December 2011 and 15 October 2012.

8 The Respondent's calculations were based on the following steps:

(a) calculate wages paid for the relevant period;
(b) calculate sum properly due;
(c) subtract (a) from (b);
(d) divide result of (c) by half;
(e) deduct from result of (d) sums already paid to the Claimants' former solicitors.

The process was applied to records made available to the Respondent (not, of course, the Claimant's employer), evidencing hours worked, pay rates paid and rates which would have been payable by the Respondent to employees directly employed by them. By this route, the Respondent arrived at calculations for Mr Baig and Mr Hared as follows.

Mr Baig

Shortfall in wages x 50%	£3,340.58	
Less compensation already paid:	£ 919.99	
Total award		£2,420.59

Mr Hared

Shortfall in wages x 50%	£3,393.89	
Less compensation already paid:	£ 620.00	
Total award		£2,773.89

9 The Respondent's calculations were completed by May 2020 and shared with Mr Baig and Mr Hared, accompanied by supporting evidence. Neither challenged the basic methodology, the pay rates on which the calculations were based or the Respondent's arithmetic. They did complain that the proposed awards were much too low, unfair and discriminatory. They also argued that benefits other than basic pay should be included in the reckoning. In addition, they maintained that interest should be paid from the date when the various underpayments occurred.

10 Following my Order of 22 September 2020, the Respondent re-delivered the May calculations and accompanying explanatory documents. As I have said, the Claimants did not comply with their obligation to identify points on which they disagreed with the Respondent's case on remedy. In fact, it appears that they did not respond at all.

11 Although I might have taken a different line given Mr Hared's breach of my last Order, I gave him the opportunity to challenge the Respondent's case orally. As I understood him, he made three points. First, he said (without evidence in support) that the numbers at least in his case were wrong because he had been paid for some shifts at £8.00 per hour rather than the Respondent's figure of £8.80. Second, he maintained that compensation should have taken account of travel allowances. Third, he contended that interest should have been added.

12 Ms Seymour stood by the Respondent's calculations. She also made the point that they had mistakenly taken account of Olympic/Paralympic bonuses, which were strictly outside the scope of my original decision. Accordingly, the awards proposed were to a small extent wrong *in the Claimants' favour*.

13 I declined to consider Mr Hared's first point. The Respondent had no notice of it and I was satisfied that it would not be fair to allow it to be raised in circumstances where Ms Seymour (without evidence and instructions) would not be able to engage with it in any meaningful way. The travel allowances argument was wrong because my original decision confined the remedy to basic pay. The point about interest had obvious moral merit but it could not succeed because the Tribunal has no power in this kind of case to award interest on pre-judgment loss.

14 Having stepped back to review the remedy claims in the round (*ie* by reference not only to Mr Hared's oral argument but to all the material before me) I was satisfied that there was no flaw in Respondent's calculations and no scope to award anything in excess of the figures proposed.

15 Ms Seymour said that she hoped that payment would be made to both Claimants within 14 days, provided that they supplied their addresses and bank details without delay to Ms Homan, the Respondent's solicitor. Mr Hared promised to do so within 24 hours and to tell Mr Baig without delay of the need to do the same.

EMPLOYMENT JUDGE Snelson
30th Nov 2020

Judgment entered in the Register and copies sent to the parties on : 30/11/2020

..... For Office of the Tribunals